



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Brown et al.
Serial No.: 09/050,614
Filed: 30 March 1998
For: Surgical Weight Control Device

Group No.: 1723
Examiner: M. Savage

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

JUN 31 2004

OFFICE OF THE COMMISSIONER

429

**PETITION TO ACCEPT DELAYED PAYMENT OF ISSUE FEE
FAILURE TO PAY UNINTENTIONAL (37 CFR 1.155(c) AND 1.316(c))**

NOTE A terminal disclaimer should not accompany a petition to accept late payment of the issue fee under 37 CFR 1.155 or 1.316. Notice of July 9, 1985 (1056 O.G. 61).

1. Applicant petitions for acceptance of the issue fee for which payment was due on 13 June 2003
2. This petition is filed:
☒ (a) within one year of the issue fee due date (which fell on a Sunday).
☐ (b) within three months of the date of the first decision in a petition to accept late payment of the issue fee because of unavoidable delay under 37 CFR 1.316(b).
3. The entire delay in filing the required reply, namely, payment of the issue fee, from the due date for the reply until the filing of a grantable petition was unintentional. (37 CFR 1.137(b))
4. Please see attached Remarks Accompanying Petition for Revival of An Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)
5. **Payment of the issue fee:**
☐ has been filed.
☒ is enclosed.
Regular patent, 37 CFR 1.18(a),
☒ \$1,330.00 LARGE ENTITY
☐ \$ 665.00 SMALL ENTITY
Design patent, 37 CFR 1.18(b),
☐ \$480.00 LARGE ENTITY
☐ \$240.00 SMALL ENTITY
6. **Petition fee (37 CFR 1.17(m))**
Application status is:
☐ Small business entity-fee \$ 665.00
☒ other than small entity-fee \$1,330.00

09/050/2004 R00000001 09050514

JUN 17 2004

1330.00 59

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed as follows: Mail Stop Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Judith Dunaway

(TYPE OR PRINT NAME OF PERSON MAILING PAPER)

Date 14 June 2004

(Signature)

7.

Payment of total fee:

Total issue and petition fee to be paid \$ 2660.00

☒ Enclosed please find check for \$ 2660.00

☐ Charge Account No. _____ the amount of \$ _____

☒ Charge Account No. 06-2360 , for any additional fee required. A duplicate of this petition is attached. '

Date: 14 June 2004

Reg. No.: 29,243

Tel. No.: (262) 783 - 1300



SIGNATURE OF ATTORNEY

Daniel D. Ryan

(TYPE OR PRINT NAME OF ATTORNEY)

RYAN KROMHOLZ & MANION, S.C.

PO Box 26618

Milwaukee, Wisconsin 53226

(P.O. Address)

*OK to
refund
deposit account
as per Judy Dunaway
for Daniel Ryan*



Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Brown et al

RECEIVED

Attorney Docket No.: 1006.F-5231

Serial No.: 09/050,614

JUN 21 2004

Examiner: M. Savage

Filed: March 30, 1998

OFFICE OF THE COMMISSIONER

Group Art Unit: 1723

Title: Surgical Weight Control Device

**REMARKS ACCOMPANYING PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. §1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On July 17, 2003, the Patent and Trademark Office issued a Notice of Abandonment in the above matter, stating that applicant failed to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. Applicant never received the Notice of Allowance.

Applicant intended to immediately petition to revive the application. However, after many phone calls and status inquiries to the Examiner, it was determined that the prosecution file had been lost by the Patent Office. Applicant hired a Washington associate to obtain a PALM printout of the file activity from the Patent Office. According to the PALM printout, the Notice of Allowance was mailed on 13 March 2003.

The official status of the PTO file is "LOST". On January 23, 2004, Applicant requested that the file be reconstructed in accordance with 37 CFR 1.251. Applicant has not yet received a response to this Request.

05/10/2004 AXELLEY 00000001 09050614

01 FC:1453 1330.00 02

Adjustment dates: 07/30/2004 AXELLEY

05/30/2004 AXELLEY 00000001 09050614

01 FC:1453 1330.00 02

07/30/2004 AXELLEY 00000010 09050614

01 FC:1452 110.00 02

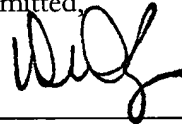
Trans. Ref: 07/30/2004 AXELLEY 0003591900

0000002350 Name/Number:09050614

07/30/2004 01220.00 CR

For these reasons, Applicant has been unable to obtain a copy of the Notice to Pay Base Issue Fee, so that it can reply to the Notice by payment of the Base Issue Fee. It is for this reason that the entire delay in filing the required reply from the due date until the filing of this petition pursuant to 37 C.F.R. § 1.137 (b) was unintentional. In compliance with 37 C.F.R. § 1.137 (c), Applicant hereby submits payment of the Base Issue Fee and, further, requests that the Notice be reissued by the Patent Office and forwarded to the Applicant to the correspondence address set forth in the Declaration previously filed in this case (Bradford R. L. Price, Baxter Healthcare Corporation, Fenwal Division (RLP-30), P.O. Box 490, Route 120 and Wilson Road, Round Lake, Illinois 60073).

Respectfully Submitted,



By _____

Daniel D. Ryan

Registration No. 29,243

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

14 June, 2004

Enclosures: Copy of Statement Under 37 C.F.R. §1.137(b)
Check

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND											
1 Date of Request: <u>7/29/04</u>		2 Serial/Patent # <u>09050614</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
	Filing			\$							
	Amendment			\$							
	Extension of Time			\$							
	Notice of Appeal/Appeal			\$							
<input checked="" type="checkbox"/>	Petition			\$							
	Issue	29	6/17/04	\$ 1220. ⁰⁰							
	Cert of Correction/Terminal Disc.			\$							
	Maintenance			\$							
	Assignment			\$							
	Other			\$							
			7 TOTAL AMOUNT OF REFUND								
			\$ 1220. ⁰⁰								
8 TO BE REFUNDED BY:											
10 REASON:		Treasury Check									
<input checked="" type="checkbox"/> Overpayment <input type="checkbox"/> Duplicate Payment <input type="checkbox"/> No Fee Due (Explanation):		Credit Deposit A/C #:									
		9 <table border="1" style="display: inline-table; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 20px;">0</td> <td style="width: 20px;">6</td> <td style="width: 20px;">--</td> <td style="width: 20px;">2</td> <td style="width: 20px;">3</td> <td style="width: 20px;">6</td> <td style="width: 20px;">0</td> </tr> </table>			0	6	--	2	3	6	0
0	6	--	2	3	6	0					
Paid for 1453 petition (unintentional), should be unavoidable 1452 petition											
11 REFUND REQUESTED BY:											
TYPED/PRINTED NAME: <u>Derek L. Woods</u>			TITLE: <u>Attorney</u>								
SIGNATURE: <u>Derek Woods</u>			PHONE: <u>305 0014</u>								
OFFICE: <u>Petitions</u>											
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****											
APPROVED: <u>[Signature]</u>			DATE: <u>7/30/04</u>								

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B